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21 UNITED STATES DISTRICT COURT  
22 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
23 OAKLAND DIVISION

24 STATE OF CALIFORNIA, *et al.*,

25 Plaintiffs,

26 v.

27 DAVID BERNHARDT, *et al.*,

28 Defendants.

No. 4:18-cv-05712-YGR

(Consolidated With Case No. 4:18-cv-05984-YGR)

**DEFENDANTS' NOTICE OF LODGING OF  
THE AMENDED ADMINISTRATIVE  
RECORD**

1 Federal Defendants hereby give notice of the lodging of the amended administrative record. On  
2 March 8, 2019, Defendants lodged the original administrative record in this case. ECF Nos. 100, 101.  
3 After Plaintiff Conservation and Tribal Citizen Groups alerted Defendants that, due to a technical error,  
4 the record inadvertently disclosed certain privileged materials, on March, 27, 2019, Defendants lodged a  
5 corrected administrative record. ECF Nos. 102, 103. Since the lodging of the corrected record, as re-  
6 quired by the Case Management Order, the Parties have conferred regarding objections to the adminis-  
7 trative record. *See* ECF Nos. 97, 104. Having resolved those objections, Defendants now lodge with the  
8 Court this amended administrative record, which replaces the original record. Attached to this notice are  
9 the index to the amended administrative record and the privilege log for the amended administrative  
10 record. One courtesy copy of the amended record will be provided for chambers. Copies of the amend-  
11 ed record are also being served on Plaintiffs' and Intervenor's counsel by overnight mail.

12  
13 The amended administrative record includes five documents that were inadvertently omitted  
14 from the original administrative record. As explained in the attached Declaration of James Tichenor  
15 (Exhibit A), the amended administrative record consists of 2,413 documents bates stamped  
16 WPRR\_AR\_000001 to WPRR\_AR\_180480. The documents have been recorded in PDF format on the  
17 flash drive, except for certain data files that have been produced as Excel spreadsheets. The Excel  
18 spreadsheets can be manipulated by the user once they are opened. To the extent a user alters the files,  
19 the files are no longer reflective of the information used by BLM to make the challenged decisions in  
20 this case and are extra-record evidence.

21  
22 Also included on the flash drive are documents bates stamped WPRR\_XR\_000001 to  
23 WPRR\_XR\_001370. These documents are included as a result of the conferral process between the  
24 Conservation and Tribal Citizen Group Plaintiffs and Defendants. *See* ECF No. 97, 104. As explained  
25 in the attached declaration, Defendants have not certified these documents as part of the administrative  
26 record. Ex. A ¶ 9.

1 The Conservation and Tribal Citizen Group Plaintiffs and Defendants disagree as to whether  
2 these non-certified documents bates stamped WPRR\_XR\_000001 to WPRR\_XR\_001370 are properly  
3 part of the administrative record. However, to avoid additional motions practice and to expeditiously  
4 move forward with briefing the merits of the case, the Citizen Groups and Defendants have agreed that  
5 Defendants will provide these documents to the Court for its review. The Parties and Court may cite  
6 to these non-certified documents as if they were part of the administrative record. The Citizen Groups  
7 and Defendants also agree that these non-certified documents would properly be a part of the record on  
8 appeal.

10 The index included on the flash drive is an index to both the amended administrative record and  
11 the non-certified documents bates stamped WPRR\_XR\_000001 to WPRR\_XR\_001370. The document  
12 numbers in each index entry have been hyperlinked to the corresponding file for convenient navigation.  
13 Similarly, the privilege log included on the flash drive is the privilege log for both the amended adminis-  
14 trative record and the non-certified documents bates stamped WPRR\_XR\_000001 to  
15 WPRR\_XR\_001370.

17 The amended administrative record includes deliberative documents. Although Defendants  
18 include these documents consistent with Northern District of California caselaw, their inclusion is  
19 subject to Defendants' continuing objection that deliberative documents do not properly belong in an  
20 administrative record prepared under the Administrative Procedure Act absent evidence that the agency  
21 acted in bad faith.

23 Respectfully submitted this 14th day of May, 2019.

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/s/ Carter F. Thurman

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